C. Elton Johnson, d/b/a Print-Quic *and* Mobile Typographical Union, Local No. 27. Case 15-CA-7686

July 13, 1972

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On February 12, 1982, Administrative Law Judge Richard J. Linton issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, C. Elton Johnson, d/b/a Print-Quic, Mobile, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge: The initial portion of this case was heard before me in Mobile, Alabama, on December 9 and 10, 1980, pursuant to the June 27, 1980, complaint and notice of hearing issued by the General Counsel of the National Labor Relations Board through the Director for Region 15 of the Board.[1] The complaint is based upon a charge filed, and thereafter amended, by Mobile Typographical Union, Local No. 27 (Union or Local 27 herein) against C. Elton Johnson, d/b/a Print-Quic (Respondent or Johnson herein).[2]

In the complaint the General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by threatening employees with physical harm about March 13, 1980, because of their union membership, and Section 8(a)(5) of the Act beginning January 1, 1980, and, thereafter, by unilaterally changing wage rates, refusing to furnish union requested information, unilaterally laying off unit employees, and, on April 18, 1980, terminating its business operations without bargaining with Local 27 over the effects of Respondent's decision to close on unit employees.[3]

By its answer, Respondent admits certain allegations, but denies that it has violated the Act in any manner.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

For several years, until April 1980, C. Elton Johnson operated a printing business as a sole proprietorship in Mobile, Alabama. Johnson did business under the assumed name of Print-Quic. On April 17, Johnson terminated his Print-Quic operation. During the period beginning June 27, 1979, until Johnson terminated Print-Quic business,[4] Respondent sold goods and printing services valued in excess of $50,000 to firms each of whom in turn met the Board's direct inflow standard for discretionary jurisdiction.[5] Respondent admits, and I find, that it is an employer within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Local 27 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background—Appropriate Unit and Majority Status*

On May 9, 1977, Johnson signed a contract (G.C. Exh. 2) with the Union. The effective date of the contract was October 1, 1976, and the expiration date was September 30, 1977. A second contract was apparently executed on May 27, 1978, and effective October 1, 1977, to December 31, 1978 (G.C. Exh. 3). Johnson executed a third contract on April 4, 1979, effective January 1 to December 31, 1979 (G.C. Exh. 4).

Complaint paragraph 7 described the appropriate unit as "All journeymen and apprentice production employees employed by the Respondent at its Mobile, Alabama, facility, excluding all other employees . . . ." Article 1, section 1, of the three past collective-bargaining agreements provides:

> The Employer hereby recognizes the Union as the exclusive bargaining representative of all employees

[1] Further evidence pertaining to commerce facts was received on December 1, 1981, in Mobile, Alabama, pursuant to an order reopening the hearing for such purpose.

[2] Respondent's name appears as amended at the hearing.

[3] All dates shown are for 1980 unless otherwise stated.

[4] The time period involved differs somewhat from that alleged in the complaint, but Respondent made no objection regarding this at the hearing. Thus, the evidence was received by implied consent.

[5] Respondent's operation therefore satisfies the Board's indirect outflow standard of jurisdiction. *Siemons Mailing Service*, 122 NLRB 81, 85 (1958). As the record reflects that Respondent shipped over $20,000 of the above goods it sold directly to points outside the State of Alabama, legal (statutory) jurisdiction is established.

> covered by this agreement. The words "employee" and "employees" when used in this agreement apply to journeymen and apprentices.

Section 2 provides:

> All work within the jurisdiction of the Union shall be performed only by journeymen and apprentices. Apprentices shall be employed only in accordance with the ratio of apprentices to journeymen provided elsewhere in this agreement. The term journeymen and apprentices shall in no way be understood to apply exclusively to members of the Union.

Section 3 of this same agreement provides:

> Jurisdiction of the Union and the appropriate unit for collective bargaining is defined as including all production work, beginning with receipt of copy and continuing until the product is delivered to the customer. The Employer shall make no other contract covering this work.

I find that the unit description set forth in the complaint is that provided for in the current collective-bargaining agreement. Where, as here, the unit has historically been recognized by the parties and recognized by the Union, the unit has been found to be appropriate. *Schuck Component Systems*, 230 NLRB 838, 840 (1977).

It is a well-established legal principle that the existence of a prior contract lawful on its face raises a dual presumption of majority—a presumption that the union was the majority representative at the time the contract was executed, and a presumption that the majority continued at least for the life of the contract. *Bartenders, Hotel, Motel and Restaurant Employers Bargaining Association of Pocatello, Idaho, and its Employer-Members*, 213 NLRB 651 (1974). These principles are equally applicable whether the Union has been certified by the Board, or, as here, recognized as the bargaining representative of the employees by Respondent without Board certification. *Emerson Manufacturing Company, Inc.*, 200 NLRB 148 (1972). The presumption of majority status of an incumbent union arising from a valid collective-bargaining agreement may be rebutted after the expiration of that agreement upon a demonstration that the incumbent either has in fact lost its majority status or that the employer has reasonable cause to doubt a continuation of majority status. *Guerdon Industries, Inc.*, 218 NLRB 658 (1975). Two prerequisites must exist for sustaining the defense that the reasonable doubt exists. The asserted doubt must be based on *objective* considerations,[6] and such doubt must be raised in a context free of unfair labor practices. *Guerdon, supra.*

Contending that Local 27 did not represent a majority of the unit, Respondent relies upon evidence adduced at the hearing which casts doubt on whether a majority of the unit (approximately 10 employees) were *members* of Local 26 in December 1979 or early January 1980. Such reliance is misplaced, for evidence of union *membership*, particularly in a right-to-work State such as Alabama, is irrelevant. *Guerdon, supra* at 660, fn. 16. Accordingly, I deem it unnecessary to discuss the evidence on this point, and I find that at all times relevant herein Local 27 was the exclusive bargaining representative of the employees in the unit.

[6] Whether the employer has a reasonable basis for believing that majority support for a union no longer exists is tested as of the date it refuses to bargain with the union *Bartenders, supra* at 653.

B. *Chronology of Events*

1. January 1980 wage increase—Complaint paragraph 11(a) dismissed

Complaint paragraph 11(a) alleges that, during the month of January 1980, Respondent unilaterally changed the wage rates of employees in the unit without affording the Union prior notice and/or a meaningful opportunity to discuss and/or bargain thereon.

It is undisputed that in early to mid January, Respondent did in fact grant its employees a pay increase of about 5.5 percent.[7] Not only does the record reflect that the January pay increase was consistent with past practices insofar as the timing is concerned, but it discloses that the procedure followed was in accordance with past practice. That is, former Chapel Chairman Doyle Chandler testified that in January 1979 Johnson notified him that he would be giving the employees a pay increase and that in fact he did so in January 1979—before negotiations took place for the 1979 contract. It also appears that the 1979 contract subsequently executed, and retroactive to January 1, 1979, merely incorporated the pay increase already granted by Johnson.

Johnson followed this same procedure in January 1980, including giving Chandler notice that he was about to grant a pay increase. While it does appear that union officials, including Chandler, were not consulted about the amount of the pay increase, it affirmatively appears that the Union acquiesced in this procedure. Although it may well be that such past practice does not bind the Union forever to that procedure, it seems that fundamental fairness would require the Union to give advance notice that it desired to change the past practice and negotiate the amount of the next pay increase.

In light of the foregoing, I shall dismiss complaint paragraph 11(a).

2. Refusal-to-bargain allegations dismissed

a. *Introduction*

Complaint paragraph 11(b) alleges that Respondent unilaterally laid off 11 named unit employees and terminated its business operations on April 18 without affording the Union prior notice and/or a meaningful opportunity to discuss and/or bargain over the *effects* of the layoff and business closure on unit employees.

[7] The pay stubs (G.C. Exh. 6) of Ruby Graham reflect that she received a pay increase of $13.20 over her regularly weekly pay in 1979 of $240.80, or an increase of about 5.485 percent. Johnson testified that the increase amounted to approximately one-half of the published inflation rate. Chapel Chairman Doyle Chandler testified that he received an hourly pay increase of 47 cents. Based upon the contractual scale, Chandler's raise seems to have been about 6.5 percent.

Complaint paragraph 16 alleges that Respondent violated Section 8(a)(1) and (5) of the Act by refusing on and after February 5, 1980, to provide the Union, as requested, "economic information regarding the proposed sale of Respondent's facility to another entity," which information, it is alleged, "is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit."

These refusal-to-bargain allegations are considered together, for they are based on the same factual events.

By letter dated October 23, 1979, addressed to Johnson, Local 27's secretary-treasurer, Irene A. Parker, requested that negotiations begin on a new contract as follows (G.C. Exh. 5):

> You are hereby notified that as of December 11, 1979, our current collective bargaining agreement will expire. Negotiations should begin immediately so that a new agreement may be consummated by or before this December 31, 1979, expiration date.
>
> We hereby offer to meet with you for the purpose of negotiating an agreement with respect to wages, hours and other terms and conditions of employment.

It is clear that on two or three occasions between October and the end of December 1979, or early January, Johnson approached Chapel Chairman Doyle Chandler (who also served on the Union's negotiating committee) and asked when the parties were going to have a negotiating meeting. Chandler stated that he did not know but that he would find out. He thereafter notified union officials that Johnson was ready and waiting to negotiate. On the second occasion Johnson inquired, Chandler told him that he still did not know. Chandler reported to the Union on Johnson's willingness to negotiate and that both he and Chandler were waiting.

Such delay was consistent with past practice inasmuch as W. Russell Waterson, International representative of the Union's parent organization, testified that he negotiated the 1979 contract at a meeting conducted around February or March 1979. Indeed, the 1979 contract, as earlier noted, was signed by Johnson on April 4, 1979.

About January 14, 1980, Federal Mediator Tolbert contacted Johnson relative to arranging a bargaining session. Although Johnson was surprised on being contacted by a Federal mediator rather than a union representative, Johnson agreed, either in this conversation or a subsequent one, to meet with the Union and the mediator.

The parties held three bargaining sessions—February 5, February 22, and March 18—all in the Federal mediator's office. International Representative Waterson testified that each of the meetings lasted less 45 than an hour, and Chapel Chairman Chandler testified that the first meeting lasted about 30 minutes, the second meeting less than that, and the third and final meeting no more than 20 minutes. Present in addition to Federal Mediator Tolbert were Albert Todd, president of Local 27; Doyle Chandler, James Parker, and W. Russell Waterson, international representative and chief spokesman for the Union. Representing Respondent at the first two meetings was Johnson himself. At the third meeting, Johnson was accompanied by attorney Moon who served as Print-Quic's spokesman. Although Waterson and Chandler testified concerning the three bargaining sessions, Respondent called no witness to testify concerning the discussions at the bargaining sessions.

Interspersed between the three bargaining sessions were three meetings Johnson held with his employees concerning their possible layoff. The first such meeting was held about February 7, the second about March 6, and the third about March 18.

In late January, prior to the first session of February 5, Johnson received from Chandler an unopened envelope which contained the Union's contract proposals (Resp. Exh. 2). By its proposals, the Union sought significant improvements in several economic areas.

b. *The bargaining session of February 5, 1980*

At this meeting Waterson told Johnson that the Union was there to bargain on the contract proposals submitted by the Union previously. Johnson said he had nothing to negotiate because he was in the process of selling his business and that he had a deposit of $25,000 on the sale. Waterson told Johnson that whether the business was sold would not change the obligation to bargain. Waterson asked who was going to buy and Johnson said he was not free to say. Waterson told him that the Union had to have some proof that he was going to sell the business, but Johnson said he was not free to give it at that time but would be in a position to tell the Union in about 2 weeks. Waterson said they would resume the bargaining session at that time. Chandler testified that as the parties discussed the next meeting date, Johnson did in fact reveal the name of the purchaser but said his name was not for publication. The purchaser so named was Royce Ray.[8]

c. *First layoff meeting of February 7, 1980*

Chandler testified that a day or two after the first bargaining session, or around February 7, Johnson called the production workers together for a meeting in the bindery area of the plant. He told them that he had a good group of employees, who were doing good work, and that he had had a good year. However, he said that in response to an offer he had received he was going to sell the equipment of Print-Quic but not the business. He said he was giving the employees a 30-day notice for them to find jobs elsewhere as called for in the collective-bargaining agreement.

Former bindery employee Ruby C. Graham testified that at the February 7 meeting, Johnson told the employees that his health was bad and so was his wife's,[9] that he could not handle the business any longer, and that there was so much discontent that he was just going to get out of it. He said he had a prospective buyer for the shop who had given him a $25,000 retainer check which

[8] Royce Ray, president of Sipco, Inc., testified regarding commerce facts.

[9] Chandler places Johnson's reference to his health, and that of his wife, at the second layoff meeting of March 6.

he had in his pocket.[10] He said that all of the employees were good and that he would highly recommend them to a prospective buyer but that they would have to go to the buyer and apply for the jobs themselves.

d. *The second bargaining session of February 22, 1980*

At this second bargaining session, Waterson began by telling Johnson that they were there to bargain on a contract. Johnson responded that there was nothing to negotiate because he had sold the business. He stated that he had called his employees together on February 7 and given them a 30-day notice that he was selling the business and that they were all going to be laid off. Johnson told Waterson that he intended to carry out the layoff exactly as he had told the employees that he planned to do. Johnson also told Waterson that he had told his employees, at the February 7 meeting, that the Union had insisted on written proof that the business had been sold but that he did not have to show the Union any proof.

Waterson told Johnson that the law provided that the Union was entitled to proof of the sale because it affected employees and their jobs, and that the Union did not believe that the business had been sold and the Union wanted proof. Johnson said he would not give that proof. Waterson told Johnson that the Union did not believe that Royce Ray had bought the business and in fact the Union did not believe that the business had been sold but instead suspected that the work had been transferred to another location and unit employees were being lay off.[11] Waterson again asked for some proof in writing of the sale and who was buying it, and Johnson again denied the request. He said the Union would just have to take his word for it. This request and refusal was reiterated again. In answer to the work being transferred, Johnson said the work was not being transferred to another Company, Southeastern, apparently owned by Johnson. Johnson also stated that the work was not being transferred by Print-Quic to itself in some other location.

When Waterson asked what was happening to the customer accounts, and whether they were being shipped to some other location, Johnson responded that he had told them all he was going to and that he could shut the door and do what he is doing. Waterson replied that the law entitled the Union to proof of a sale and insisted that Johnson furnished it. Johnson responded:

> I've told you all I'm going to tell you. If you cause trouble over this, create a rukus, these employees will not be able to work any where in the city of Mobile because nobody will hire them.[12]

Waterson repeated the Union's demand for bargaining and for proof of the sale. In response to a question by Waterson regarding the date the employees would be laid off, Johnson replied that they would be laid off about March 7 at the end of the 30-day notice.

e. *Second layoff meeting of March 6, 1980*

Chandler and Graham testified that the second meeting occurred on March 6, the day before the planned shutdown of the business. This meeting was also held in the bindery.

At this second layoff meeting, Johnson said that he realized that a lot of people would be hurt if he shut the business, that they would be without jobs and he did not want anyone to get hurt. He said that because of his and his wife's health, and pending litigation, he did not feel that he could continue to operate and would be closing the business in the future, but that when he did close he would try to do it right.

f. *The bargaining session of March 18, 1980*

As earlier noted, the only change in attendees at this last session was the presence of attorney Moon representing Johnson. Waterson opened the meeting by stating that the Union was there to negotiate a contract. Attorney Moon stated that there was nothing to negotiate, for Johnson was closing the business. Johnson stated that his deal to sell the business had fallen through and that he was not bargaining with the Union because he was going to close the plant.[13]

Attorney Moon stated that Print-Quic was giving the employees a 30-day notice of the plant closing and that Johnson would assist people in getting relocated in other jobs. Waterson responded that the Union did not believe the business had been sold or that the plant was going to close and that the Union insisted on bargaining for a contract. He then asked Moon if he was refusing to negotiate a contract and Moon replied in the affirmative. Moon said there was nothing to bargain on, that the plant was closing, and that Print-Quic was not bargaining.

Before the parties left the meeting, they discussed some pending grievances as well as a charge pending before the NLRB. Waterson testified that the charge pending at that time was later withdrawn.

g. *The third layoff meeting of March 18, 1980*

On either March 18 or 19, the third layoff meeting was held again in the bindery of Print-Quic with all the production employees. On this occasion Johnson said he was going to have to close the business and that he was

[10] Whereas Chandler at one point quoted Johnson as saying, at the initial bargaining session and the first layoff meeting, that he was selling the equipment, both Waterson and Graham quoted Johnson in terms of a sale of the business (presumably goodwill and a customer list as well as just equipment). I credit their version on this rather than Chandler's.

Pressman Raymond P. Maxwell testified that Johnson also said he was going to do everything possible to get rid of the Union from his shop. This supposed remark is not alleged by the General Counsel as violative of the Act and is not in harmony with the testimony of the other witnesses. However, I need not pass on whether Johnson actually made the statement.

[11] Whereas Chandler placed the name of Royce Ray as being disclosed at the first bargaining session, Waterson placed it at the second session.

[12] This remark is not alleged by the General Counsel as a violation of the statute.

[13] Chandler testified that the switch from selling the business to closing the business came as a shock. Although the record refers to Chandler as quoting Moon as saying "we do have a valid buyer at present," it appears that either the record is in error or that Chandler misunderstood or misspoke. I find that the correct version is that described by Waterson who quotes Johnson as saying, at the March 18 session, that the sale had fallen through.

giving them a 30-day notice of the closing. He said if they could get a job somewhere else he would not hold it against them, and to go ahead and secure employment elsewhere but that he was closing the business and Print-Quic would be no more as of April 18, 1980.

Graham credibly testified that on this occasion Johnson said that he did not have a prospective buyer and that he was going to franchise out or lease his equipment but that in any event he was going to close the shop and that as of April 18, 1980, Print-Quic would be no more. As the record reflects, a few employees left for other jobs prior to the last work day of April 17.

Conclusion

As is clear from the description of the testimony, the Union asked but one or two questions concerning matters relating to the layoff and the impact of the decision to sell the operation.[14] To these questions Johnson supplied answers. All other questions asked by International Representative Waterson can be reduced to two. First, will Johnson bargain for a new contract. The answer to that, of course, was a straightforward refusal inasmuch as Johnson had just informed the Union that he was going out of business.[15] The General Counsel does not allege that a refusal to bargain for a new contract was unlawful. Second, Waterson asked for documentary proof establishing that Johnson indeed was selling his business. Johnson at first declined to identify the name of the buyer, but then, on a confidential basis, reluctantly disclosed the name of Royce Ray. Ray was a competitor of Print-Quic. For reasons not made clear in the record, the sale to Ray failed to materialize.[16]

Johnson did not have to bargain over the decision to sell Print-Quic. *First National Maintenance Corp.* v. *N.L.R.B.*, 452 U.S. 666, (1981); *General Motors Corporation, GMC Truck & Coach Division*, 191 NLRB 951 (1971). And he had the absolute right to close his business for any reason he pleased so long as there was no purpose or reasonably foreseeable effect of chilling unionism in any related business, if any, owned by Johnson. *Textile Workers of Americav. Darlington Manufacturing Co., et al.*, 380 U.S. 263 (1965). There is no allegation here of such a purpose or effect. Finally, Local 27 did not demonstrate at negotiations, nor the General Counsel at the hearing, that requiring documentary evidence of a sale (assuming the existence of such documents, other than the deposit check Johnson had received), is part of *effects* bargaining rather than *decision* bargaining. I therefore find that Johnson was not required to furnish documentary evidence of his sale.

Johnson's only burden was to bargain, if requested, about the effects of his decision on unit employees. To the very limited extent that the Union asked questions regarding the impact of that decision on unit employees, Johnson answered those questions and did, in that sense, bargain.

The short of the matter is that the Union waived its right to bargain with Johnson on further details concerning the impact of the decision to close on unit employees by failing to ask for information in that respect. The burden is upon the Union to assert the right. By failing to do so, the Union waived its right to require Johnson to bargain further about the effects. Accordingly, I shall dismiss the complaint with respect to all refusal-to-bargain allegations, including paragraphs 11(b) and 16.

3. March 13 threat—Notice must be posted

Complaint paragraph 9 alleges that "On or about March 13, 1980, Respondent, by its supervisor and agent, James Gray, at its Mobile, Alabama facility, threatened to do physical harm to employees because of their membership in the Union." Respondent admits the supervisory status of Shop Foreman Gray.

It is obvious that on March 13, Gray temporarily lost control of himself and told Chapel Chairman Chandler in the bindery, and in the presence of Ruby Graham (and another employee who is deaf), that he had had enough of this "Union mess" and that he was going to put everyone of them "under." By that, Gray went further to explain that he meant "I'll kill every damn one of you, that's what I mean, and that's more than a threat, it's a promise and I don't break promises." Gray, in an explosion of emotion, repeated his threat two or three times before turning and walking away.

Following Gray's outburst, Chandler telephoned Albert Todd, president of Local 27, and informed him of the incident.[17] He told Todd that something should be done about Gray's remarks. Todd assured him that he would see what action could be taken. Approximately 30 minutes later, Johnson approached Chandler in his work area and told Chandler that he would "talk to" Gray. It appears that the Union filed a grievance over the incident and that this is one of the grievances referred to by the parties in their bargaining session of March 18. The record does not reflect what solution, if any, was effected on the grievance. Chandler never received an apology from either Gray or Johnson for the incident nor did Johnson disavow Gray's comments. Although Gray apologized to Ruby Graham for his conduct on the occasion, he did not specifically apologize for the threat he uttered.

As Chandler was aware, Gray was a diabetic. Chandler was aware that when Gray became upset it could

[14] Local 27 did not ask, for example, (1) that Johnson bargain over additional severance pay, (2) that Johnson encourage the buyer (while a sale was the pending plan) to recognize Local 27, (3) for recall rights in the event Johnson reopened as Print-Quic or any other assumed name, (4) that Johnson notify Local 27 of the future intent to reenter the printing business, (5) that Johnson make affirmative efforts to secure jobs for unit employees in the printing industry, or (6) for any similar matters.

[15] Of course, neither the old nor a renewal contract would be binding on a purchaser of Print-Quic even if the purchaser were a successor. *N.L.R.B.* v. *Burns International Security Services, Inc.*, 406 U.S. 272 (1972). And when the sale changed to a plant closing, and cessation of the business, talk of a renewed collective-bargaining agreement was irrelevant.

[16] Chandler testified, on cross-examination, that at one meeting Johnson "could" have said that word of the sale to Ray had "gotten out" and that he, Johnson, therefore, was not going to furnish any further information on the sale. In *First National Maintenance Corp.*v. *N.L.R.B.*, 452 U.S. 666, 682-683, (1981), the Supreme Court noted that the selling employer may have need to proceed in secrecy and confidentiality.

[17] Chandler testified that Johnson was not in his office at that time or he would have reported the matter to him.

create an imbalance in his blood sugar which could lead, on occasion, to Gray's becoming a bit irrational.

I credit Gray's explanation of his behavior on this occasion. He attributed his outburst to repeated attempts in recent weeks and months by Chandler to have Gray join the Union;[18] to vandalism of his automobile which was parked on Print-Quic property, including tires being slashed; and to two occasions when Chandler came to Gray and told him that he had been accused by bargaining-unit employees of sexual harassment. The immediate event which triggered Gray's emotional outburst was the fact that Gray had observed Chandler passing around to employees at work a newspaper clipping discussing sexual harassment. Gray brooded over this during the lunch period. Rather than the lunchtime calming him, his concern and agitation over the matter simply increased. When he returned from lunch he confronted Chandler and complained about the vandalism of his car, of anonymous telephone calls he had been receiving, and then uttered his repeated threats to Chandler. At the hearing Gray admitted that he could not prove that union members were responsible for the vandalism and anonymous telephone calls. However, it is clear that such was Gray's belief.

Liability of Gray's threats to Chandler is imputed to Respondent by virtue of Gray's supervisory position. While ordinarily such liability would require an order that Respondent post an appropriate notice to employees, the prevailing circumstances should not be overlooked. Thus, Respondent Johnson had closed his business, and it is clear that Gray's outburst was an obvious personal reaction on his part unassociated with any policy of Respondent. While Gray did not apologize to the complete satisfaction of Graham, nor did Johnson's statement of Chandler that he would "talk to" Gray constitute a sufficient disavowal of the conduct or an assurance that it would not be repeated, it seems that this was the only occasion that Gray never expressed any anitunion remark, much less a threat of physical violence based upon union considerations. In these circumstances, had Johnson expressly disavowed Gray's threat and assured employees that he would not condone such conduct in the future, it could well be that the notice would not be required. However, in the absence of such disavowal and assurances by Johnson, satisfaction of the purposes of the Act necessitate that Johnson be ordered to mail a notice to each of the employees on his payroll as of March 13, 1980, to the last known address.[19] The notice shall state that if he reenters the printing business, he will not condone such conduct by any of his supervisors.

CONCLUSIONS OF LAW

1. At all times relevant herein, Respondent was an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 27 is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times relevant herein, Local 27 was the exclusive collective-bargaining representative for the employees in the contractual unit.

4. Respondent has violated Section 8(a)(1) of the Act by and through Supervisor Gray's threat to do physical violence against employees based upon union considerations.

5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not violated Section 8(a)(5) of the Act as alleged.

THE REMEDY

In view of the foregoing, I shall recommend that Respondent be ordered to mail the notice to employees, attached to this decision as the "Appendix," to all employees on its payroll as of March 13, 1980, and to furnish proof of such mailing to the Regional Director for Region 15.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[20]

The Respondent, C. Elton Johnson, d/b/a Print-Quic, Mobile, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully threatening employees with physical violence by and through supervisors based upon union considerations.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist Mobile Typographical Union, Local No. 27, or any other labor organization, to bargain collectively through representatives of their own choosing, to act together for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Mail signed and dated copies of the attached notice marked "Appendix" to all employees on its payroll as of March 13, 1980, to their last known address.[21] Copies of such notices, to be furnished to Respondent by the Regional Director for Region 15, after being duly signed

[18] Art. I, sec. 4, of the prior collective-bargaining agreement clearly states that foremen may be members of the Union.

[19] In view of these considerations, the customary notice requirement should be ordered even though the threat was an isolated event. *Morton's IGA Foodliner*, 237 NLRB 667 (1978). An order to mail the notice is appropriate. *Cerro Caty Devices, Inc.*, 237 NLRB 1153 (1978).

[20] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[21] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and dated by Respondent's representative, shall be mailed by Respondent immediately upon receipt thereon.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to confirm compliance with the terms of this Order.

(c) Notify the Director for Region 15, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaint is dismissed insofar as it alleges violations not specifically found herein, including allegations of refusal to bargain in violation of Section 8(a)(5) of the Act, and including complaint paragraphs 11 and 16.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing, at which all sides had the opportunity to present their evidence and cross-examination witnesses, the National Labor Relations Board has found that I violated the National Labor Relations Act, through the conduct of a statutory supervisor, and the Board has ordered me to post this notice and to comply with its provision. I intend to abide by the following:

The National Labor Relations Act gives you, as employees, the right:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

Accordingly, I assure you that in the event I reenter the printing business:

I WILL NOT condone any unlawful threats of physical violence by any of my supervisors against any of my employees, and I WILL assure my employees, if any such threats occur, that I will take whatever action is appropriate regarding such supervisor in light of the Order of the National Labor Relations Board and this notice.

I WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act, including your right to self-organization, to form, join, or assist Mobile Typographical Union, Local No. 27, or any other labor organization, to bargain collectively through representatives of your own choosing, to act together for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

C. ELTON JOHNSON, D/B/A PRINT-QUIC